

Tom Goldsmith

Comments on: 413.1 Responsibilities of Owners, Managers, and Supervisory Professional Guardians

Please consider the following comments to the proposed standard of Practice (SOP) 413.

Obviously this is a much-needed definition and clarification of guardianship agency ownership, responsibility, and every guardian's accountability for incapacitated persons.

I have one specific text suggestion, a text question, and two concerns.

Text Suggestion: In Standard 413.1.3.1 I would add to the words "**or should have known**" following, "... *the professional guardian ... knows*" in the third line, as printed. Without this change to "*knows or should have known*" the often heard 'I didn't know.' answer may make this SoP difficult to enforce.

Text Question: In Standard 413.4.3.1 is the term "*majority interest*" sufficient to achieve the CPGB's intentions, or should the words "**substantial interest**" be used? My recollection of the in-person Board meeting where this topic was discussed, is that intentions expressed by the meeting were on the stronger side, leaning away from non-CPG ownership.

First Concern: There are at least four general ways this Standard of Practice might be viewed:

1. As a clarification of current policy, more carefully assigning responsibility, accountability, and even legal liability within organizations practicing in a complex and sensitive area. Where practice involves some of the most vulnerable members of society.
2. As a needed regulation of possibly over-zealous or self-aggrandizing "entrepreneurs" or "capitalists" whose contributions are not needed in Washington State.
3. As a "restriction of entry" into a field providing services to incapacitated persons.
4. As an un-necessary limiting of capital and other resources for an under-funded industry in dire need.

I see all four of the above views as having some validity, while each might be thoughtfully defended by supporters and critics alike. So I think it is important that the

Board be prepared to hear from each perspective, and have its position and all replies well thought out. While the number of agencies operating in Washington State, and a paucity of checks and balances, make clarification of this “413” essential.

My own opinion is that the conservative path restricting ownership of professional guardianship firms to certified guardians is sensible for the time being. I believe running any business involves attention to the profit motive, and sometimes pressure simply to “keep the doors open” and thus associated risks. So until Washington State has much better monitoring in place, together with coaching, review, and supervision systems, these risks should not be taken. Also, any theoretical possibility of gains from capital investments or other resources for the guardianship community should be offset with a realization that excess capacity can create problems just as can under capacity.

Second Concern: The number of times the word “*reasonable*” is used in the “413” text suggests to me this standard has not been easy to write, and may take considerable time before becoming accepted practice. Thus I hope the Board is prepared to discuss all details thoroughly, and “get it right” in terms of consensus and support.

Such discussion should ask why the word “*responsible*” is used in this regulation, while the word “*accountable*” is not. When I Google >> accountability vs responsibility << I find a general view that these words are NOT synonyms, and their differentiated meanings are thoughtfully discussed. I also see that while “accountability” implies liability and culpability, some find that “responsibility” does not. So I suggest that all interested parties should be asking how “accountability” (which is most clear for solo practitioner guardians) can become a more useful concept within guardianship agencies.

My own personal measure comes from asking who it is (if anyone) that awakens at night, or pauses during a shower, to worry about whether a valid and proper decision is being made. So I believe accountability is acutely important in the guardianship world, where so many decisions are about vulnerable persons whose most serious personal interests are at stake.

Additionally, I would say that if the Board is trying to regulate guardianship owners, it may ultimately be necessary to be much more assertive and direct, rather than simply trying to regulate an owner’s employees.

Thank you for your considering my suggestion, question, and concerns.